



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU JUDICIAL REVIEW NO.78 OF 2011

**IN THE MATTER OF AN APPLICATION FOR RELIEFS OF JUDICIAL REVIEW IN THE
FORM OF CERTIORARI**

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT (NO.18 OF 1990)

AND

IN THE MATTER OF NAIVASHA LAND DISPUTES TRIBUNAL CASE NO. 139 OF 2009

**(KARAGITA SELF HELP MIXED GROUP GERALD KAMAU KARUGA, PRISCILLA NJOKI
KIRUKU, DAVID THIGA AND OTHERS -VS- PETER MBURU, GEOFFREY NGANGA AND
HOSEA MUTHAMA)**

AND

IN THE MATTER OF THE CHIEF MAGISTRATE'S COURT AT NAIVASHA

MISCELLANEOUS CIVIL SUIT NO. 38 OF 2010

**(KARAGITA SELF HELP MIXED GROUP GERALD KAMAU KARUGA, PRISCILLA NJOKI
KIRUKU, DAVID THIGA AND OTHERS -VS- PETER MBURU, GEOFFREY NGANGA AND
HOSEA MUTHAMA)**

AND

IN THE MATTER OF

REPUBLICAPPLICANT

VERSUS

NAIVASHA LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

THE CHIEF MAGISTRATE'S COURT

AT NAIVASHA2ND RESPONDENT

ATTORNEY GENERAL3RD RESPONDENT

AND

GERALD KAMAU KARUGA..... 1ST INTERESTED PARTY
PRISCILLA NJOKI KIRUKU2ND INTERESTED PARTY
DAVID THIGA3RD INTERESTED PARTY
SHEM MUKOMA KARUGA4TH INTERESTED PARTY
KIMANI MWANGI5TH INTERESTED PARTY
CHRISTOPHER N MUNYAKA6TH INTERESTED PARTY
ANNE NYAMBURA WAITITU7TH INTERESTED PARTY
JOHN K MACHARIA..... 8TH INTERESTED PARTY
NDUTA KIMANI..... 9TH INTERESTED PARTY
GACHAGA GITHUKU..... 10TH INTERESTED PARTY
ESTHER WANJIRU MAINA11TH INTERESTED PARTY
PIUS OLE MACHARIA12TH INTERESTED PARTY
ESTATE OF THE LATE
WANJERI WA KIMANI13TH INTERESTED PARTY
LUCY WANGUII MUNGE..... 14TH INTERESTED PARTY

EX-PARTE

PETER MBURU

GEOFFREY NGANGA NYOIKE

HOSEA MUTHAMA (*suing on behalf of*

KARAGITA MIXED SELF HELP GROUPSUBJECT

RULING

- 1.The Applicants, **Peter Mburu, Geoffrey Nganga Nyoike and Hosea Muthama** suing on behalf of **Karagita Self Help Mixed Group** filed a Notice of Motion dated 18th July, 2011 under **Order 53 Rule 3** of the **Civil Procedure Rules 2010** seeking that this Honorable court be pleased to issue an Order of Certiorari to remove to this Honourable court and quash the 1st respondent's award dated 15th March, 2011, adopted as judgment and a decree issued by the Naivasha Senior Principal Magistrate on 1st April, 2011 and costs.
2. The application was filed pursuant to leave granted on 13th July, 2011. It is supported by the Statutory Statement dated 12th July, 2011 and a Verifying Affidavit sworn by Peter Mburu of even date.
3. On 3rd December, 2013 the state counsel representing the 1st and 2nd Respondents intimated to court that he was not opposing the application.

4. The application was opposed by the interested parties. **Priscilla Njoki Kiruku**, the 2nd interested party herein filed her replying affidavit on behalf of the other interested parties on 12th October, 2011 and Written Submissions on 20th June, 2013.

5. From the material before me, the applicants aver that they are the officials of Karagita Mixed Self Help Group and are registered as proprietors of twenty six parcels of land being trustees of the group. According to a members meeting held on 13th March, 2004 the trustees were only to transfer the respective parcels to their owners after clearance of all arrears by the said owners.

6. The Interested Parties dissatisfied with this resolution preferred a claim before the Naivasha Land Dispute Tribunal who on 15th March, 2011 found in their favour and issued an amended award as follows;

"that the 14 members of Karagita Self Help Mixed Group should be issued with the title deeds accordingly. The original map of the land dispute should be adhered to so that all public utilities be maintained as they are.

The board of Trustees should stop interfering with the plaintiffs property.

The directors should surrender the title deeds to the District Land Registrar and make arrangements for each member to get his/her title deed."

7. The tribunal's amended award was adopted as judgment of the court on 1st April, 2011 and a decree issued.

8. The defendants in the claim before the tribunal, being dissatisfied filed this application for Judicial review for reasons that:

*a) they were not made a Party to nor were they heard in the said proceedings and were not served with the statement of claim as required under **section 3(4) of the Land Dispute Tribunal Act No. 18 of 1990***

b) it is against the rules of natural justice for the respondent to have made adverse orders against the applicants without hearing them or according them an opportunity to make their presentations

c) the tribunal overstepped its mandate and jurisdiction in ordering a transfer of the land parcels to the 14 members of Karigita Mixed Self Help group and ordering the applicants to surrender titles to the Land Registrar.

9. On 25th May, 2012 all parties agreed that the motion be disposed of by way of written submissions. The applicant filed their submissions on 14th September, 2012 and the interested parties filed theirs on 20th June, 2013.

10. The applicants counsel reiterated what was stated in the verifying affidavit sworn by Peter Mburu. He submitted that the decision of the Tribunal was ultra vires the **Land Disputes Tribunal Act No. 18 of 1990** because it went outside its mandate and exceeded its powers clearly defined in **Section 3** of the same Act. He relied on the following cases among others; **Republic -vs- The Chairman Keiyo District Land Disputes Tribunal and 5 others Misc. civil appl. No 262 of 2006, Karanja -vs-The Attorney General, Civil Appeal No. 310 Of 1997, Asman Maloba Wepukhulu and another -vs- Wakwabubi Biketi Civil appeal No. 157 of 2007 and Republic -vs-Public Procurement Administration Review Board Ex parte Kenya Medical supply agency & 3 others (2010) Eklr.**

11. The plaintiffs counsel further submitted that the applicants deserved the orders sought because the 1st respondent did not give the applicants any opportunity of being heard and in issuing the amended award the 1st respondent abused its powers by taking into account irrelevant facts, ignoring very relevant factors, using its powers for an improper purpose and using its powers in bad faith.

12. The interested parties Counsel also reiterated what was stated in the replying affidavit of Priscilla Njoki Kiruku. He submitted that the interested parties were members of Karagita Mixed Self Help Group who had contributed money to purchase two plots within Karagita area. All members had balloted and were allocated their respective plots which they proceeded to develop extensively. The applicants therefore had a duty to process title deeds for their members but instead processed the said titles and registered them in their names with the aim of extorting more money from their members.

13. He further submitted that a court order issued in HCCC No. 2561 Of 1994 extinguished the group and its members' right of ownership of the land in dispute thus making the applicants and interested parties trespassers in the suit land. The 1st respondent therefore had jurisdiction to deliberate and determine on the issue at hand as regards the right to occupy and work on the land.

14. Counsel also submitted that the applicants did participate in the proceedings before the tribunal. Geoffrey Nganga Nyoike and Hosea Muthama appeared before the tribunal.

15. From the pleadings and submissions by the respective counsels for the parties, I find four issues for determination;

i) was the decision of Naivasha Land Dispute Tribunal unlawful

ii) were the applicants given a hearing by the 1st respondent

iii) are the applicants entitled to orders of judicial review as prayed

iv) What is the order as to costs.

16. On the first issue, the question arising is the claim before the tribunal. Was it a claim for occupation and work on land as submitted by counsel for the interested parties or was it a claim touching on title as submitted by counsel for the applicants? If it is found that the claim was touching on title then another question arises on whether the tribunal had power to hear and determine such a claim. If the decision was made in excess of the tribunal's power, it matters not that the decision was the right decision in the circumstances. If the decision was *ultra vires*, unlawful, unreasonable and against the rules of natural justice, this court will have no option but to quash the decision. See Kenya National Examination Council vs Republic Exparte Geoffrey Gathenji Njoroge and others.

17. The remedy of judicial review is concerned not with the private rights or merits of the decision being challenged but with the decision making process. Its purposes is to ensure that the individual is given fair treatment by the authority to which he has been subjected. See Republic vs Secretary of State for Education and Science (Exparte) Avon County Council (1991) I ALL ER 282 at 285. The point is more succinctly made in the English case of Chief Constable of North Wales Police Vs Evan (1982) I W.L.R 1155, by Lord Hailsham of St Marlebone.

Thus:

"the purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the court"

18. Therefore, a decision of an inferior court or public authority may be quashed (*by an order of certiorari made on application of Judicial review*) where the court or authority acted without jurisdiction, or exceeded its jurisdiction, or failed to comply with the rules of natural justice in a case where these rules are applicable, or where there is an error of law on the face of the record or the decision is unreasonable in the Halsbury sense.

19. **Under Section 3 of the Land Disputes Tribunals Act**, the Tribunal's jurisdiction is restricted to hearing and determining cases involving-

- (a) the division of, or determination of boundaries to land, including land held in common;**
- (b) a claim to occupy or work land; or**
- (c) a claim on trespass to land.**

20. Disputes relating to title or the possession of land registered under the **Registered Land Act, Chapter 300 Laws of Kenya (now repealed)** were the preserve of the High Court or the Resident Magistrate's courts depending on the monetary value of the suit property. **Section 159 of the Registered Land Act Cap 300** states:

"Civil suits and proceedings relating to the title to, or the possession of, land, or to the title to a lease or charge, registered under this Act, or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matters in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate's Court, or, where the dispute comes within the provisions of Section 3 (1) of the Land Disputes Tribunals Act in accordance with that Act."

21. In the current case, the interested parties took their claim to the Naivasha Land Disputes Tribunal because they had bought land as members of a self help group, paid for their respective portions, balloted, allocated and took possession. The applicants refused to transfer the title deeds to the interested parties claiming they owed money. The interested parties wanted the tribunal to find in their favour that the applicants were holding these titles illegally and have the same released to them. This is exactly what the tribunal held and ordered the applicants to issue the 14 members of Karagita Self Help Mixed Group with their title deeds, surrender the titles they were holding to the District Land Registrar and make arrangements for each member to get his/her title deed. This to me is not an award on trespass or/and a claim to occupy and work on the land. There is no doubt that it relates to cancellation of title and ownership of land. In determining the issue of ownership of the suit parcels, the Tribunal no doubt exceeded its jurisdiction. Any action done without jurisdiction is in law a nullity, that is to say of no legal force. As such it could not and was not validated by its adoption by the lower court.

22. On the second issue on whether the Applicants were given a hearing by the tribunal, in the Affidavit verifying the facts dated 12th July, 2011 in paragraphs 7 and 8, the applicants avers that they were not served with the statement of claim before the Tribunal and adverse orders were made without giving them a hearing. This is denied by the interested parties. They have exhibited copies of the tribunal proceedings which are clear that two of the applicants, Geoffrey Nganga and Hosea Muthama attended the Tribunals proceedings. They even testified and were cross-examined. I therefore find this allegation unfounded as the applicants were obviously represented and participated in the Tribunal's proceedings.

23. Having found the order of the Tribunal to have been a nullity in law, permitting it to continue forming the record of the Tribunal or the lower court is, in my view, a violation of the subject's rights. It is on these grounds that this court finds that the applicants are entitled to the orders sought and quashes the decision of the Naivasha Land Disputes Tribunal dated 15th March, 2011 and adopted by the Naivasha Chief Magistrates Court. The decree issued by the Naivasha Senior Principal Magistrate on 1 st April, 2011 is also quashed.

Costs are awarded to the applicants.

Dated, Signed and Delivered at Nakuru on this 21st day of February, 2014.

L N WAITHAKA

JUDGE

In the presence of:

- Mr. Karanja for the subject

- N/A for the Respondents

- N/A for the IP.